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In re Application of :
SHAPIRO et al. :
Application No. 09/617,935 : DECISION ON PETITION
Filed: 08/17/2000 :
Attorney Docket No. RD26643USA :

This is a decision on the petition under 37 CFR 1.181 (no fee), filed April 15, 2002, and resubmitted on May 1, 2008, requesting withdrawal of the holding of abandonment in the above-identified application. The application file was recently forwarded to the Office of Petitions. The undersigned immediately reviewed the petition upon receipt and issued the following decision.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Notice of Allowance and Issue Fee Due mailed on July 31, 2001, which set a three-month shortened statutory period for reply. Accordingly, a reply was due on or before October 31, 2001. In the apparent absence of a timely filed reply, the Office mailed a Notice of Abandonment on March 26, 2002.

Petitioners assert that they timely submitted the Issue Fee Transmittal form, which included an authorization to charge the Deposit Account for the issue fee payment. To support this assertion, petitioners provided a copy of a return postcard, acknowledging receipt of "Notice of Allowance and Issue Fee Transmittal (in duplicate) charging deposit account 07-0868; Designation of Fee Address w/ Certificate of Mailing" in the U.S. Patent and Trademark Office (USPTO) on October 1, 2001. A copy of the previously submitted reply accompanies the petition.

The Issue Fee Transmittal, which the USPTO acknowledged as received on October 1, 2001, is not of record in the application file and has not been located to date. However, MPEP 503 states "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the Issue Fee Transmittal was timely received in the USPTO but lost after receipt thereof.

Upon inspection of the Issue Fee Transmittal, the Office notes petitioners checked box 4b indicating that the Issue Fee and Advance Order of One Copy should be charged to the Deposit Account. However, petitioners did not include the Deposit Account Number on the Issue Fee Transmittal.

As currently stated in MPEP 1306,

Where it is clear that an applicant actually intends to pay the issue fee and required publication fee, but the proper fee payment is not made, for example, an incorrect issue fee amount is supplied, or a PTOL-85B Fee(s) Transmittal form is filed without payment of the issue fee, a general authorization to pay fees or a specific authorization to pay the issue fee, submitted prior to the mailing of a notice of allowance, will be allowed to act as payment of the correct issue fee. 37 CFR 1.311(b). In addition, where the deposit account information is added to the Fee(s) Transmittal form (PTOL-85B), but the check box authorizing that the deposit account be charged the issue fee is not checked, the deposit account will still be charged the required issue fee and any required publication fee.

A review of the record reveals that the Deposit Account number and a general authorization were previously provided to the Office in a communication from petitioners on August 16, 2001.

The issue fee of \$1,280.00 and the \$3.00 advance copy fee due at the time of the submission of the present petition on April 15, 2002, will be charged to the Deposit Account as authorized.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

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Office of Petitions